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IN THE HIGH COURT OF JUDICATURE CHHATTISGARH
AT BILASPUR
Writ Petition No. 2275/2003

Petitioner : M/s Som Distilleries (P) Ltd., Maharana Pratap Nagar, Bhopal-(M.P.), Through its Officer Incharge K.G.S.Chouhan, B-24, Vidya Nagar, Bilaspur-(C.G.)

Versus

Respondents : 1. State of Chhattisgarh Through the Secretary Commercial Taxes & Excise Department, DKS Bhawan, Raipur-(C.G.)

2. The Excise Commissioner, Raipur – (C.G.)

3. M/s Kedia Castle Delleon Industries Ltd., Kedia Nagar, Kumhari, Dist : Durg-(C.G.)

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

(49)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2275/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11.09.2003

Shri P.Diwakar, counsel for the petitioner.

Shri Sanjay K. Agrawal, Deputy Advocate General for the State.

Shri Anand Tiwari, counsel for the Caveator.

The petitioner has preferred this writ petition under Articles 226 & 227 of Constitution of India against the order dated 23.06.2003 passed by the Excise Commissioner, Raipur by which the petitioner has been directed to make the payment of deduction of cost of the plant and machinery to the respondent no.3.

The petitioner's case is that the petitioner was granted tender for the year 2002-2004 before which the tender was with respondent no.3- M/s Kedia Castle Dellon Industries Ltd, and as per rule 13(1) of the Chhattisgarh Country Sprit Rules, 1995, on the expiry of the C.S.I. Licence, the outgoing licensee shall sell and the incoming licensee shall purchase all the sanctioned warehouse plants including its vats, corking, capsuling, machines etc. at a price fixed by the Valuation Committee appointed by the Excise Commissioner for the purpose. The licensee shall also purchase the liquor, empty bottles, the sealing materials etc in stock on the day of expiry of the licence at the rates applicable to the outgoing licensee. The payment shall be made to the outgoing licensee within a month of such date.

The petitioner was then served with a notice dated 10.07.2002 by the Excise Commissioner whereby the petitioner was directed to make the payment of plant and machinery as per the cost shown by

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the respondent no.3. The claim of the respondent no.3 was on the higher side i.e. about Rs.70 lacs, so the petitioner disagreeing with the claim of respondent no.3 estimated/calculated the same at the present market value and found it much lesser i.e. Rs.12.40 lacs than the claimed amount. The Excise Commissioner overlooked the request of the petitioner on 20.07.2002 that the cost of the plant and machinery is to be valuated by the Valuation Committee as per Rule 13(1) of the Country Sprit Rules of the ware house and to include the petitioner's representatives name Mr. Mukesh Vyas at the time of visit of the Valuation Committee. Copy of the letter dated 20.07.2003 is Annexure P-4 to the writ petition. The petitioner vide letter dated 11.11.2003 sent a letter to the Excise Commissioner, Raipur (respondent no.2) and informed him regarding the claim of the petitioner of the dues of 1996-98 from respondent no.3 amounting to Rs.10,56,610/- but with a decision dated 03.04.2003 that the claim pertains to the then State of M.P. the respondent no.2 has rejected the claim of the petitioner. The petitioner also challenged the valuation of plant and machinery which was done relying on the data and valuation submitted by the Chartered Account of the respondent no.3.

The main grievance of the petitioner is that the valuation of the plant and machinery and other items was not done properly and as per past practice at the time of valuation the representatives of the petitioner as well as the representative of the outgoing licensee should have been made party in the valuation committee and allow

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the representatives of the licensee to participate in the valuation process. However, the petitioner's representative was not allowed and that's why the valuation was excessive. Aggrieved by this order the petitioner has also filed an appeal before the State Government which is still pending (Annexure P-10). Learned counsel for the petitioner submits that the appeal is still pending and it is not being decided.

Having heard the learned counsel for the parties and having regard to the facts and circumstances of the case and the fact that the petitioner has already filed an appeal before the State government, therefore, the petitioner can pursue his remedy with the Appellate Authority. However, the Appellate Authority is directed to decide the appeal within a period of one month from today and the petitioner can raise all his grievances before the Appellate Authority which he has raised in this writ petition.

Learned counsel for the petitioner submits that the respondents are pressing hard for making payment and if the appeal is not decided at the earliest then the whole purpose of the filing the appeal will be frustrated.

In view of the above submission, the Appellate Authority shall consider all the grievances of the petitioner and will try to decide his appeal at the earliest and if it is not possible for the Appellate Authority to decide the same at the earliest then they can consider

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	about the request of the petitioner for postponing the payment and all that. With this observation and directions, this writ petition shall stands disposed of. Consequently, M.W.P. No.2075/2003 and I.A. No.6995/2003 for urgent hearing also stand disposed of. Certified copy as per Rules. **Sd/-** **L.C. Bhadoo** **Judge**	

Roshan